

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

STEPHEN WENDELL AND LISA)
WENDELL, FOR THEMSELVES AND)
AS SUCCESSORS IN INTEREST)
TO MAXX WENDELL, DECEASED,)

PLAINTIFFS,)

VS.)

NO. C 09-04124 CW

JOHNSON & JOHNSON; CENTOCOR,)
INC., ABBOTT LABORATORIES;)
SMITHKLINE BEECHAM D/B/A)
GLAXOSMITHKLINE; TEVA)
PHARMACEUTICALS USA; GATE)
PHARMACEUTICALS, A DIVISION)
OF TEVA PHARMACEUTICALS USA;)
PAR PHARMACEUTICALS, INC.,)

PAGES 1 - 29

DEFENDANTS.)

OAKLAND, CALIFORNIA

THURSDAY, SEPTEMBER 5, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS
(TELEPHONICALLY):

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WOODLAND FALLS CORPORATE PARK
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BY: KEVIN HAVERTY, ATTORNEY AT LAW

(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

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PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY;
~~TRANSCRIPT PRODUCED BY COMPUTER AIDED TRANSCRIPTION.~~

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A P P E A R A N C E S (CONT'D.)

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BY: PRENTISS W. HALLENBECK, JR.
ATTORNEY AT LAW

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THURSDAY, SEPTEMBER 5, 2013

2:05 P.M.

P R O C E E D I N G S

THE CLERK: WE'RE CALLING C09-4124, WENDELL, ET AL.
VERSUS JOHNSON & JOHNSON, ET AL.

PLEASE STEP FORWARD AND STATE YOUR APPEARANCES FOR THE
RECORD AND AS WELL AS THE APPEARANCES ON THE LINE. THANK YOU.

(PAUSE IN THE PROCEEDINGS.)

MS. CHILDERS: MICHELLE CHILDERS FOR THE CENTOCOR
DEFENDANTS AND J & J.

MS. FRENZEN: AMY FRENZEN FOR THE CENTOCOR DEFENDANTS
AND J & J.

MS. SHAFROTH: TRACI SHAFROTH FOR ABBOTT
LABORATORIES.

MR. FRIEDER: GOOD AFTERNOON, YOUR HONOR. TOM
FRIEDER FOR DEFENDANT TEVA PHARMACEUTICALS.

MR. HAVERTY: GOOD AFTERNOON, YOUR HONOR. KEVIN
HAVERTY, WILLIAMS CUKER BEREZOVSKY FOR THE PLAINTIFFS.

MR. FORADAS: GOOD AFTERNOON, YOUR HONOR. MICHAEL
FORADAS ALSO ON BEHALF OF ABBOTT.

MR. HALLENBECK: GOOD AFTERNOON, YOUR HONOR.
PRENTISS HALLENBECK ALSO ON BEHALF OF TEVA PHARMACEUTICAL
U.S.A.

THE COURT: IS THAT IT?

SO WE'RE ON FOR A FURTHER CASE MANAGEMENT CONFERENCE.
THIS CASE HAS KIND OF GOTTEN OFF TRACK HERE. THERE WERE SOME

1 MOTIONS -- OR THEY WEREN'T MOTIONS. THEY WERE CASE MANAGEMENT
2 CONFERENCES FILED LAST SUMMER, BUT THEY WEREN'T STYLED AS
3 MOTIONS OR REQUESTS FOR ANYTHING, SO NOTHING WAS DONE WITH
4 THEM. AND THEY WERE, IN FACT, DISGUISED REQUESTS FOR PUTTING
5 OVER DATES, AND THOSE DATES WERE NOT PUT OVER. AND THEY
6 HAVEN'T YET BEEN PUT OVER. MAYBE YOU THOUGHT THEY WERE.
7 OR -- I DON'T KNOW.

8 BUT I'M CONCERNED ABOUT THIS CASE BECAUSE IT'S A, WHAT?
9 IT'S AN '09 CASE. IT'S BEEN SET FOR TRIAL IN JANUARY FOR
10 QUITE A LONG TIME NOW. I'VE -- AS IT HAPPENS HAVE NO OTHER
11 TRIALS DOUBLE OR TRIPLE SET WITH IT IN JANUARY. I'VE GOT
12 THREE WEEKS TO TRY IT IN JANUARY.

13 YOU'RE TALKING ABOUT PUTTING IT OVER TILL JUNE, AND I'M
14 TRIPLE SET IN JUNE. SO IF I WERE TO PUT IT OVER, I'D HAVE TO
15 PUT IT OVER MUCH LONGER THAN JUNE, WHICH I'D REALLY RATHER NOT
16 DO.

17 TODAY WAS THE DAY FOR HEARING CASE DISPOSITIVE MOTIONS.
18 NONE WERE FILED. I GUESS MAYBE YOU THOUGHT YOU'D BE GETTING A
19 CONTINUANCE. AND MAYBE YOU HAD IN MIND TO FILE SOME. THERE
20 IS A PENDING MOTION TO RECONSIDER THE SUMMARY JUDGMENT FOR
21 GSK. AND IF I WERE TO GRANT THAT, THEN GSK UNDOUBTEDLY WOULD
22 COME BACK AND SAY, YOU KNOW, WE CAN'T GO TO TRIAL IN JANUARY
23 AND THEY'D BE RIGHT, SO I PROBABLY WOULD HAVE TO PUT IT OVER,
24 BUT I HAVE TO SAY I'M NOT REALLY INCLINED TO GRANT THAT. I
25 DON'T ANTICIPATE GRANTING THAT, SO I'M JUST CONCERNED ABOUT

1 PUTTING THIS OVER FOR SO LONG OR PUTTING IT OVER AT ALL,
2 FRANKLY.

3 **MR. HAVERTYF:** YOUR HONOR, THIS IS KEVIN HAVERTY.

4 AS YOU MAY RECALL, WE HAD SOME ISSUES THAT WERE REFERRED
5 TO THE MAGISTRATE FOR MANAGEMENT --

6 **THE COURT:** WELL, SO YOU SAID.

7 **MR. HAVERTY:** -- BACK IN THE --

8 **THE COURT:** RIGHT. EXACTLY. BUT YOU SAID THAT SHE
9 DIDN'T RULE ON SOMETHING BY MARCH 5TH, BUT IT WAS -- MARCH 5TH
10 WAS THE TIME YOU FILED IT. I DON'T KNOW. YOU DID HAVE SOME
11 ARGUMENT ABOUT THE MAGISTRATE JUDGE, BUT IT DIDN'T SEEM TO ME
12 TO BE WELL TAKEN.

13 **MR. HAVERTY:** WELL --

14 **THE COURT:** YOU SAY THAT THE DEADLINE FOR PLAINTIFFS
15 TO SUBMIT EXPERT REPORTS WAS MARCH 5TH AND HAD ALREADY PASSED
16 BY THE TIME JUDGE CORLEY'S APRIL 22ND ORDER WAS ENTERED.
17 HOWEVER, YOU DIDN'T ASK TO MODIFY THE SCHEDULE UNTIL MARCH
18 5TH, SO IT WASN'T REALLY THAT SHE DELAYED THE RULING. IT WAS
19 THAT THE DATE HAD ALREADY COME AND GONE BY THE TIME YOU EVEN
20 ASKED TO PUT IT OVER. SO YES, SHE DIDN'T RULE ON IT BY MARCH
21 5TH, BUT YOU DIDN'T ASK FOR IT BEFORE THEN EITHER.

22 **MR. HAVERTY:** IF YOUR HONOR RECALLS -- MAY RECALL, IT
23 WAS --

24 **THE COURT:** WHO'S SPEAKING? WHO'S SPEAKING?

25 **MR. HAVERTY:** I'M SORRY. THIS IS KEVIN HAVERTY.

1 WE WERE -- WE WERE IN A DISPUTE OVER THE SCOPE OF
2 DISCOVERY WITH TEVA, WHICH WAS ULTIMATELY REFERRED BY THIS
3 COURT TO THE MAGISTRATE. SHE HELD A HEARING I BELIEVE ON
4 MARCH 7TH. SHE HAD A CONFERENCE WITH US. AND -- TO SEE IF WE
5 CAN HAMMER OUT THE SCOPE OF DISCOVERY AMONG OURSELVES.

6 WE ENDED UP HAVING ARGUMENT WITH THE -- THE MAGISTRATE.
7 AND THEN SHE ORDERED A BRIEFING SCHEDULE ON THE ISSUE ABOUT
8 THE SCOPE OF DISCOVERY, HOW FAR IT SHOULD EXTEND.

9 THAT EXTENDED INTO I DON'T -- AS I SIT HERE TODAY, I DON'T
10 RECALL, BUT IT'S PROBABLY WELL INTO APRIL. AND THEN THE
11 MAGISTRATE DECIDED WHAT THE SCOPE OF DISCOVERY SHOULD BE IN
12 THAT.

13 ALL -- AT THE SAME TIME, WE WERE ALSO ENGAGED IN DISCOVERY
14 WITH THE OTHER DEFENDANTS, AND IT ENDED UP PUSHING ALL THE WAY
15 INTO JUNE BECAUSE OF SCHEDULING ISSUES IN TERMS OF THE
16 WITNESSES, AT WHICH POINT WE FINALLY COMPLETED FACTUAL
17 DISCOVERY.

18 NOW, PLAINTIFFS HAVE SUBMITTED THEIR EXPERT REPORTS AT
19 THIS POINT IN THE GAME. AND I KNOW THAT THE DEFENDANTS ARE
20 PROPOSING TO SUBMIT THEIR EXPERT REPORTS IN THE NEXT COUPLE OF
21 WEEKS. SO IF WE DID GET OFF TRACK, WE -- I WOULD SUBMIT TO
22 THE COURT THAT WE'RE BACK ON TRACK NOW, EVEN THOUGH THE
23 JANUARY TRIAL DATE SEEMS A BIT UNREALISTIC BUT NOT NECESSARILY
24 IMPOSSIBLE.

25 **THE COURT:** DID THE DEFENDANTS HAVE IN MIND TO FILE

1 SUMMARY JUDGMENT MOTIONS?

2 **MS. CHILDERS:** YES, YOUR HONOR. YOUR HONOR, FIRST OF
3 ALL, TO THE EXTENT THAT WE MISUNDERSTOOD THE COURT ON BEHALF
4 OF DEFENDANTS, I APOLOGIZE. I -- I DON'T THINK ANY PARTY FELT
5 THAT THEY -- DIDN'T UNDERSTAND THAT THEY WERE DOING ANYTHING
6 THAT WAS INCONSISTENT WITH THE ORDERS THAT WE RECEIVED.

7 WE HAD A SCHEDULING ORDER FROM YOU, AND THEN AFTER THAT,
8 FACT DISCOVERY WAS ORDERED. IT WAS SIX DEPOSITIONS. AND WE
9 SUBMIT -- SUBMITTED ANOTHER PROPOSED SCHEDULE THAT WOULD
10 ADJUST FACT DISCOVERY TO ALLOW THE SIX DEPOSITIONS -- EXCUSE
11 ME. I GOT SOMETHING IN MY THROAT HERE. BUT -- AND THEN AFTER
12 THAT, WE JUST SHIFTED THE DATES JUST PRECISELY TO -- TO MEET
13 WHAT YOU HAD ORDERED.

14 **THE COURT:** WELL, YOU PROPOSED SHIFTING THEM.

15 **MS. CHILDERS:** WE -- WE PROPOSED SHIFTING THEM. YOUR
16 HONOR, YOU KNOW, WE -- AGAIN, WE APOLOGIZE IF IT WASN'T
17 FASHIONED IN SUCH A WAY THAT IT WAS HEARD BY THE COURT. BUT
18 WE SUBMITTED SOMETHING IN ORDER TO PROPOSE SHIFTING THE DATES
19 BECAUSE BY THE TIME WE HAD LEARNED THAT THE DISCOVERY HAD BEEN
20 ORDERED, THE FACT DISCOVERY HAD BEEN ORDERED, THE DEADLINES --
21 WE HAD ALREADY BEEN IN A POSITION WHERE WE COULDN'T FINISH
22 THAT DISCOVERY BEFORE EXPERT DISCLOSURES WOULD BE DUE, AND
23 PLAINTIFF TOOK THE POSITION THAT THEY COULDN'T PRODUCE THEIR
24 EXPERT REPORTS UNTIL THAT FACT DISCOVERY WAS COMPLETED. AND
25 WE DID COMPLETE IT QUICKLY.

1 I BELIEVE IT WAS ORDERED IN APRIL 2013 AND COMPLETED IN
2 2000 -- 2013, SO JUNE 27TH, 2013, EXCUSE ME.

3 SO -- SO, YOU KNOW, AGAIN, WE APOLOGIZE TO THE EXTENT THAT
4 WE WERE MISUNDERSTANDING THE ORDERS HERE. BUT IT WAS REALLY
5 OUR IMPRESSION THAT BECAUSE THE MAGISTRATE HAD ORDERED FACT
6 DISCOVERY, THAT FACT DISCOVERY WOULD STILL NEED TO BE OPEN AT
7 THAT TIME.

8 AND WE SUBMITTED SOMETHING TO THE COURT FOR CONSIDERATION
9 TO ALLOW THE COURT TO KEEP ITS ORIGINAL SCHEDULING IN PLACE
10 BUT ALLOW THAT FACT DISCOVERY THAT HAD BEEN COURT ORDERED.

11 **THE COURT:** OH, WELL, BUT WHAT --

12 **MR. HAVERTY:** AND, YOUR HONOR --

13 **THE COURT:** -- DOESN'T KEEP THE ORIGINAL SCHEDULE IN
14 PLACE. IT HAS THE TRIAL -- HAS THE SUMMARY JUDGMENT MOTIONS
15 CONTINUED FROM TODAY UNTIL FEBRUARY. AND THE TRIAL CONTINUED
16 FROM JANUARY TILL THE FOLLOWING JUNE.

17 **MS. CHILDERS:** YOU'RE RIGHT, YOUR HONOR. I DIDN'T
18 STATE THAT IN THE WAY I SHOULD HAVE. WHAT I MEANT TO SAY WAS
19 THAT THE PACING THAT THE COURT HAD ORDERED, WE KEPT THAT
20 PACE --

21 **THE COURT:** OH.

22 **MS. CHILDERS:** -- THE PRECISE PACE THAT YOU HAD
23 ORDERED, AND JUST MOVED THE FACT DISCOVERY TO ALLOW JUST A FEW
24 MONTHS TO COMPLETE THAT FACT DISCOVERY THAT HAD BEEN ORDERED
25 BY THE MAGISTRATE AND THEN WE SUBMITTED A PROPOSED ORDER TO

1 THE COURT ALLOWING US A FACT DISCOVERY CUTOFF. WE -- ONLY
2 ALLOWED US A SHORT AMOUNT OF TIME TO CONDUCT THOSE SIX
3 DEPOSITIONS. AND WHEN THOSE SIX DEPOSITIONS WERE COMPLETED --
4 WE DID SUBMIT IT AS SOON AS WE COULD REACH AGREEMENT WITH THE
5 PARTIES. WE SUBMITTED IT RIGHT AWAY. I KNOW IT DIDN'T END UP
6 ON YOUR DESK, BUT, YOU KNOW, WE -- I BELIEVE ALL THE PARTIES
7 DID THEIR BEST TO DO WHAT THEY FELT THE COURT WOULD -- WANTED
8 US TO DO AT ALL TIMES.

9 **THE COURT:** HMM.

10 **MR. HAVERTY:** AND, YOUR HONOR, THIS IS KEVIN HAVERTY
11 AGAIN. I WOULD JUST POINT OUT THAT ONE OF THE PROBLEMS THAT
12 WE HAD WITH DISCOVERY WAS THROUGH NO FAULT OF THE PARTY, A
13 NUMBER OF THESE WITNESSES WERE -- WERE NO LONGER EMPLOYED BY
14 THE DEFENDANTS AND THEY HAD MOVED OUT OF THE STATE, AND YOU
15 KNOW, THERE WAS A POINT WHERE I HAD TO GO DOWN TO
16 NORTH CAROLINA FOR DEPOSITIONS AND OTHER PLACES. SO IT WASN'T
17 LIKE WE WEREN'T DILIGENT IN CONDUCTING THE DISCOVERY. THERE
18 WERE JUST SOME -- SOME IMPEDIMENTS. THAT'S -- AND THAT'S HOW
19 WE KIND OF SLIPPED OFF THE RAILS.

20 **MS. CHILDERS:** AND DESPITE ALL OF THOSE IMPEDIMENTS,
21 I MEAN, WE DID FINISH THE FACT DISCOVERY ORDERED BY THE
22 MAGISTRATE WITHIN A FEW SHORT MONTHS OF IT BEING ORDERED, SO,
23 YOU KNOW, WHEN WE -- WHEN WE GOT THAT ORDER, IT INVOLVED SIX
24 PLAINTIFFS -- I MEAN, SIX DEPOSITIONS, YOUR HONOR. EXCUSE ME,
25 YOUR HONOR.

1 SO SIX DEPOSITIONS AND WE WERE ABLE TO IDENTIFY THE
2 WITNESSES, TRAVEL TO GET TO THEM, AND DO IT VERY, VERY QUICKLY
3 AND AS SOON AS WE WERE ABLE TO GET THAT DONE, WE GOT TOGETHER
4 AGREED ON AN ORDER THAT WOULD KEEP THE PACING THAT THE COURT
5 HAD PREVIOUSLY ORDERED, SUBMITTED IT TO THE COURT. AND --

6 **THE COURT:** WELL, THAT WAS THE TROUBLE. IF IT HAD
7 BEEN SUBMITTED AS A PROPOSED ORDER -- I WOULD --

8 (SIMULTANEOUS COLLOQUY.)

9 **THE COURT:** -- REJECTED IT. IT WAS SUBMITTED AS A
10 CASE MANAGEMENT STATEMENT, WHICH UNFORTUNATELY, I DON'T KNOW
11 EXACTLY WHETHER WE HAD THE CASE MANAGEMENT CONFERENCE OR WHAT,
12 BUT IT DIDN'T PRESENT ITSELF AS A REQUEST TO CHANGE DATES.
13 AND A RESULT -- AS A RESULT, THE DATES NEVER WERE CHANGED, AND
14 ALTHOUGH YOU MIGHT ALL AGREE ON HOW THEY SHOULD BE CHANGED,
15 THEY HAVEN'T BEEN.

16 **MS. CHILDERS:** ABSOLUTELY, YOUR HONOR. WE APOLOGIZE.

17 IT -- IT APPEARS THAT IT NEVER MADE IT TO THE COURT'S
18 DESK, AND WE APOLOGIZE. IT LOOKS LIKE THAT WAS, YOU KNOW, THE
19 FAULT OF THE PARTIES IN THE WAY THEY SUBMITTED IT TO THE
20 COURT, AND WE VERY MUCH APOLOGIZE FOR THAT.

21 **THE COURT:** WELL, I JUST DON'T KNOW WHAT TO DO WITH
22 IT. I HATE TO PUT OVER A 2009 CASE -- AS I SAY, I COULDN'T
23 TRY IT IN JUNE IF I WANTED TO. I'D BE LOOKING AT MAYBE NEXT
24 FALL, SOMETHING LIKE THAT, AND I -- I REALLY WOULD NOT RATHER
25 NOT PUT IT OFF THAT LONG.

1 **MS. CHILDERS:** THE PACE THAT WE HAVE NOW --

2 **THE COURT:** CAN YOU TRY IT IN JANUARY? I HAVE THOSE
3 DATES?

4 **MS. CHILDERS:** YOU KNOW, I DON'T THINK THAT THE CASE
5 CAN BE TRIED IN JANUARY. I THINK THE PACE THAT WAS ORIGINALLY
6 ORDERED IS A -- IS A REASONABLE BUT AGGRESSIVE PACE AND THAT
7 THE PARTIES ARE DEFINITELY ON PACE. I KNOW WE HAVE HAD SOME
8 COMMUNICATIONS WITH PLAINTIFF'S COUNSEL REGARDING THE
9 AVAILABILITY OF THEIR EXPERTS TO PRODUCE, AND THEY'RE NOT
10 GOING TO BE ABLE TO PRODUCE THOSE EXPERTS RIGHT AWAY.

11 THE DEFENDANTS ARE IN THE PROCESS OF VERY SOON SERVING
12 THEIR EXPERT REPORTS ON PLAINTIFFS, BUT EVERY -- EVERYTHING'S
13 ON TRACK. IT'S JUST NOT TRENDING TOWARDS A JANUARY TRIAL
14 DATE. IT'S TRENDING TOWARDS A JUNE TRIAL DATE, WHICH I
15 UNDERSTAND WILL NOT WORK FOR THE COURT IN ANY WAY.

16 BUT I -- I DO KNOW THAT, YOU KNOW, WE WOULD BE AVAILABLE
17 AFTER JUNE. I DO THINK THE DEFENDANTS WOULD BE AVAILABLE
18 AFTER JUNE, AND WE CAN CERTAINLY KEEP THE CASE ON PACE AND
19 READY TO GO IF YOUR HONOR IS WILLING TO ADOPT THE ORDER THAT
20 WE THOUGHT WOULD BE THE ORDER THE JUDGE WOULD WANT US TO
21 SUBMIT.

22 **THE COURT:** HMM.

23 **MR. HAVERTY:** AND, YOUR HONOR, THIS IS KEVIN HAVERTY
24 AGAIN. AS THE COURT MAY RECALL, THERE WERE A NUMBER OF
25 DETOURS IN THIS CASE, WHICH, YOU KNOW, ACCOUNT FOR THE SEEMING

1 AGE OF IT. I WOULD JUST SUBMIT -- I THINK MS. CHILDERS AND
2 EVERYBODY ELSE WOULD AGREE WITH ME THAT WE HAVE VERY MUCH
3 RIGHTED THE SHIP AND, YOU KNOW, WE'RE MOVING ALONG APACE.

4 **THE COURT:** WELL, ONE REASON TO HAVE A FIRM TRIAL
5 DATE IS TO SEE IF THE CASE IS GOING TO SETTLE OR ISN'T GOING
6 TO SETTLE.

7 WHAT EFFORTS ARE YOU MAKING TO TRY TO SETTLE THE CASE?

8 **MS. CHILDERS:** AS STATED IN OUR CMC STATEMENT, WE DID
9 HEAD TO MEDIATION AND HAD DISCUSSIONS AND EVEN DISCUSSIONS
10 AFTER MEDIATION TO TRY TO GET IT RESOLVED. IT -- IT IS
11 LOOKING RIGHT NOW THAT WE HAVE NOT BEEN ABLE TO GET ANYWHERE
12 ON SETTLEMENT. IT MAY OR MAY NOT SETTLE. THIS MAY BE A CASE
13 THAT WILL NEED A TRIAL IN ORDER TO RESOLVE.

14 BUT AS WE SIT HERE TODAY, THERE'S NO FURTHER PLANS FOR
15 MEDIATION. IF --

16 **MR. HAVERTY:** AND THAT MEDIATION, YOUR HONOR, TOOK
17 PLACE -- THIS IS KEVIN HAVERTY AGAIN. THAT MEDIATION TOOK
18 PLACE BEFORE ANY REAL DISCOVERY WAS TAKEN. NOW WE'VE
19 COMPLETED DISCOVERY. PLAINTIFFS HAVE SUBMITTED THEIR EXPERT
20 REPORTS, AND DEFENSE EXPERT REPORTS ARE DUE SHORTLY, SO I
21 CAN'T IMAGINE IF POSTURES WOULDN'T HAVE CHANGED SOMEWHAT BASED
22 UPON THAT.

23 **THE COURT:** WELL, I CAN'T FIND IT IN YOUR STATEMENT.
24 WHO DID YOU TRY TO MEDIATE WITH AND WHEN?

25 **MS. CHILDERS:** THE MEDIATOR'S NAME --

1 **MR. HAVERTYF:** JUDGE WESTER --

2 (SIMULTANEOUS COLLOQUY.)

3 **MS. CHILDERS:** WESTERFIELD.

4 **MR. HAVERTY:** WESTERFIELD.

5 **MS. CHILDERS:** AND THAT WAS IN OCTOBER.

6 **THE COURT:** OF WHAT YEAR?

7 **MS. CHILDERS:** OCTOBER 17, 2012 WAS THE MEDIATION
8 DATE. THERE HAD BEEN SOME DISCUSSIONS AFTER THAT TIME. BUT
9 OCTOBER 17TH, 2012, WAS THE MEDIATION DATE.

10 **MR. FORADAS:** YOUR HONOR, IT'S MICHAEL FORADAS FOR
11 ABBOTT. I MIGHT JUST ADD ONE OTHER PIECE OF INFORMATION ON
12 THE SETTLEMENT FRONT, AND THAT IS SUBSEQUENT TO THAT
13 MEDIATION, WE HAD CONVERSATIONS WITH PLAINTIFFS' COUNSEL ABOUT
14 THE POSSIBILITY OF A SETTLEMENT INVOLVING ABBOTT. THEY
15 EXPRESSED AN INTEREST IN RESOLVING ALL DEFENDANTS' CLAIMS AT
16 THE SAME TIME SO THAT HASN'T GONE ANYWHERE. BUT WE DIDN'T SIT
17 DEAD IN THE WATER AFTER THE MEDIATION FAILED FROM OUR
18 PERSPECTIVE.

19 **THE COURT:** HMM.

20 WELL, WHAT ABOUT THE LENGTH OF THE TRIAL? ARE YOU STILL
21 THINKING YOU NEED A 15-DAY TRIAL?

22 **MS. CHILDERS:** TRYING TO THINK IF ANYTHING HAS
23 CHANGED FROM THE TIME THAT -- I THINK THAT THAT'S A FAIR
24 ESTIMATE. IT MAY BE GIVE OR TAKE A FEW DAYS, BUT I THINK
25 THAT'S A FAIR ESTIMATE FROM OUR PERSPECTIVE.

1 **THE COURT:** HOW LONG IS THE PLAINTIFF'S CASE-IN-CHIEF
2 INCLUDING CROSS?

3 **MR. HAVERTY:** YOUR HONOR, I WOULD SAY -- I HAVE THREE
4 EXPERTS, AND I IMAGINE A COUPLE OF THE TREATING PHYSICIANS
5 WOULD BE CALLED. I PROBABLY COULD FINISH MY CASE -- ALWAYS
6 ASSUMING THAT THE ISSUE IS SCHEDULING EXPERTS, I PROBABLY
7 COULD DO IT IN FIVE DAYS.

8 **THE COURT:** WELL, YOU HAVE THREE EXPERTS ON THREE
9 DIFFERENT SUBJECTS?

10 **MR. HAVERTY:** YES, YOUR HONOR. I HAVE ONE ON -- ON
11 LIABILITY, YOU KNOW, NEGLIGENCE. ONE ON CAUSATION, AND ONE ON
12 PATHOLOGY CAUSATION.

13 **MS. CHILDERS:** THAT IS A HEAVY EXPERT CASE. THE BULK
14 OF THE CASE WILL BE --

15 **THE COURT:** I'M SURE IT IS, BUT I DON'T LIKE TO HAVE
16 MORE THAN ONE EXPERT PER PARTY ON ANY PARTICULAR SUBJECT, SO I
17 WOULD LIKE YOU TO --

18 **MR. HAVERTY:** YEAH, THEY DON'T OVERLAP, YOUR HONOR.

19 **THE COURT:** -- NARROW THAT DOWN. AND I DON'T KNOW IF
20 YOU'RE STILL -- IF YOU'RE TAKING A STANCE FOR THE PLAINTIFF
21 THAT YOU WON'T SETTLE WITH ONE OR ANOTHER DEFENDANT
22 INDIVIDUALLY. YOU MIGHT KIND OF RETHINK THAT DEPEND -- AND
23 PARTICULARLY IF IT WOULD TAKE LONGER IF --

24 **MR. HAVERTY:** I -- YOU KNOW, I DON'T WANT TO -- I
25 OBVIOUSLY DON'T WANT TO REVEAL TOO MUCH, YOUR HONOR, BUT I

1 THINK IN LIGHT OF THE EXPERT OPINIONS THAT I SUBMITTED, THAT
2 MAY BE MORE DIFFICULT BECAUSE THE -- THE EXPERT ON LIABILITY
3 CLEARLY LAYS OUT A CASE AGAINST EACH OF THESE DEFENDANTS
4 INDIVIDUALLY, WHAT THEIR PARTICULAR ROLE WAS, AND THEY'RE KIND
5 OF INTERTWINED. SO IT MAY BE DIFFICULT TO SETTLE OUT WITH ONE
6 AS OPPOSED TO SETTling GLOBALLY.

7 BUT, AGAIN, YOUR HONOR, I JUST -- I JUST SUBMITTED THESE
8 REPORTS. I DON'T KNOW WHETHER THE DEFENDANTS HAVE HAD THE
9 OPPORTUNITY TO REALLY POUR OVER THEM. I ASSUME THEY HAVE.
10 AND I JUST DON'T KNOW WHETHER POSITIONS MIGHT SHIFT A LITTLE
11 BIT BASED UPON THE SUBMISSIONS OF EXPERT TESTIMONY BY NOW.

12 WHEN WE LAST MET AND WE DISCUSSED THIS, WE REALLY HAD
13 NO -- NO DISCOVERY. AND SINCE THEN, WE'VE TAKEN EXTENSIVE
14 DISCOVERY WHICH HAS REVEALED A LOT OF THINGS THAT WE HAD NO
15 IDEA EXISTS -- OR AT LEAST I DIDN'T HAVE ANY IDEA EXISTED
16 BEFORE THE DISCOVERY WAS DONE, SO WE'RE IN A DIFFERENT
17 POSITION.

18 **MS. CHILDERS:** AND, YOUR HONOR, ON THE DEFENDANT'S
19 SIDE, WE HAVE ABOUT TEN EXPERTS TOTAL. THERE HAVE BEEN
20 SEVERAL CONFERENCE CALLS DURING WHICH WE HAVE TRIED TO
21 STREAMLINE THE NUMBER OF EXPERTS AS MUCH AS POSSIBLE. SO WE
22 HAVE CAREFULLY REVIEWED THE ISSUES. WE MAY BE ABLE TO NARROW
23 THAT BIT FURTHER, BUT RIGHT NOW, WHERE WE LAND IS ABOUT TEN
24 EXPERTS ON THE DEFENSE SIDE.

25 **THE COURT:** WELL, THAT'S AN AWFUL LOT. HOW MANY

1 DEFENDANTS HAVE YOU GOT?

2 **MS. CHILDERS:** WELL, IT'S THREE.

3 **THE COURT:** NOT COUNTING GSK ASSUMING THEY DON'T COME
4 BACK IN. TEVA -- YOU'VE GOT A WHOLE BUNCH OF TEVA PEOPLE.

5 **MS. CHILDERS:** WE HAVE TEVA PEOPLE --

6 **THE COURT:** THAT'S JUST ONE DEFENDANT.

7 **MS. CHILDERS:** IT'S JUST ONE DEFENDANT. THREE
8 DIFFERENT -- THREE DIFFERENT GROUPS, YOUR HONOR, SO YOU'LL
9 HAVE, YOU KNOW, THE ABBOTT GROUP, THE CENTOCOR GROUP, AND THE
10 TEVA GROUP, AND BETWEEN THEM, THERE'S SOME SHARING THERE. OR
11 AT LEAST, YOU KNOW, SOME AREAS IN WHICH ONLY ONE PARTY WILL
12 HAVE AN EXPERT IN THAT AREA, BUT THERE'S DIFFERENT -- THERE'S
13 DISCRETE REGULATORY ISSUES FOR EACH OF THE DEFENDANTS, SO EACH
14 DEFENDANT WILL NEED THEIR OWN REGULATORY EXPERT TO UNDERSTAND
15 THEIR REGULATORY STORY AND BE ABLE TO EXPLAIN THAT TO THE
16 JURY.

17 AND I DON'T THINK THERE'S ANY OVERLAP IN SUBJECT MATTER,
18 EVEN THOUGH THE REGULATORY EXPERT GENERALLY -- BUT ON
19 DIFFERENT SUBJECTS, DIFFERENT PRODUCTS, DIFFERENT TIME LINES,
20 VERY LITTLE OVERLAP. HAVING ONE EXPERT IN THAT AREA WOULD NOT
21 SAVE ANY RESOURCES. IT WOULD JUST --

22 **THE COURT:** WELL, I THINK IT WOULD. IT WOULD SAVE
23 SCHEDULING PROBLEMS BECAUSE YOU WOULDN'T HAVE TO BE TRYING TO
24 JUGGLE ALL DIFFERENT PEOPLE. IT WOULD SAVE TRAVEL EXPENSES.
25 WOULD SAVE SOME TIME AND THE BACKGROUND AND EXPERTISE OF THE

1 WITNESS.

2 IT WOULD BE EASIER FOR THE JURY TO UNDERSTAND, I THINK, IF
3 IT COULD SEE THERE'S ALL OF THESE REGULATIONS AND, TRUE, THESE
4 APPLY TO THIS DEFENDANT AND THESE APPLY TO THAT DEFENDANT, BUT
5 IT'S PART OF THE SAME REGULATORY SCHEME AND INVOLVES THE SAME
6 AGENCIES. I THINK THERE'D BE A LOT OF BENEFIT TO --

7 **MS. CHILDERS:** YEAH, I THINK --

8 **THE COURT:** -- CONSOLIDATING EXPERTS AS MUCH AS
9 POSSIBLE.

10 **MS. CHILDERS:** I THINK --

11 **THE COURT:** SO I'LL JUST SAY THAT I -- I WILL BE
12 LOOKING CLOSELY AT -- I'LL BE TRYING TO THINK OF THE
13 DEFENDANTS AS ONE ENTITY AND STARTING WITH THE DEFAULT OF ONE
14 EXPERT PER SUBJECT FOR ALL THE DEFENDANTS, AND THEN YOU WOULD
15 NEED TO CONVINCE ME THAT, OH, NO, WE REALLY NEED TWO EXPERTS
16 ON ONE SUBJECT FOR THESE TWO DEFENDANTS BECAUSE THEY HAVE SOME
17 SORT OF CONFLICT.

18 AND IF YOU DO FIND -- BUT IF IT'S JUST A QUESTION OF I
19 LIKE MY GUY BETTER THAN THE OTHER PERSON'S GUY, THEN THAT IS
20 NOT GOING TO BE LOOKED AT WITH SO MUCH FAVOR. AND I DON'T
21 WANT TO HAVE TO TRY A 15-DAY CASE. IT'S HARD TO GET A JURY TO
22 SIT AROUND FOR 15 DAYS, EVEN FIND PEOPLE WHO CAN DO IT, MUCH
23 LESS RETAIN THEIR ATTENTION FOR THAT LENGTH OF TIME.

24 AND IT'S HARDER FOR ME TO SCHEDULE. SO IF YOU REALLY
25 THINK YOU NEED A 15-DAY TRIAL, I'M GOING TO NEED TO SEE WHY.

1 **MS. CHILDERS:** OKAY. YOUR HONOR, WE WILL DEFINITELY
2 TAKE THOSE COMMENTS INTO CONSIDERATION AND, YOU KNOW, ADDRESS
3 THAT FURTHER AS NEEDED.

4 YOU KNOW, I WILL MENTION THAT THE -- THE PRODUCTS ARE
5 SEPARATE AND THE -- THE TIME FRAMES DURING WHICH THE PRODUCTS
6 WERE TAKEN ARE SEPARATE. AND THE LABELING HISTORIES ARE
7 SEPARATE AS WELL. BUT WE CERTAINLY WILL BE PREPARED TO
8 ADDRESS ANY CONCERNS THAT THE CLIENT -- I -- THAT THE COURT
9 HAS ON THAT SUBJECT.

10 **THE COURT:** ALL RIGHT. WELL, ANOTHER QUESTION I HAVE
11 IS THAT YOU SAY DEFENDANT TEVA MAY FILE A SHORT LIMITED
12 DISPOSITIVE MOTION EARLY, AND THAT, I WOULD NOT FAVOR EITHER.

13 I THINK I'D RATHER HAVE ALL THE MOTIONS EARLY, AND I'D --
14 I USUALLY DON'T LIKE TO HAVE THEM AT TWO SEPARATE TIMES
15 BECAUSE THEN I HAVE TO GEAR UP ABOUT THE CASE TWICE AND READ
16 ALL ABOUT IT TWICE. SO I'M NOT INCLINED TO DO THAT. BUT I
17 WOULD BE HAPPY TO --

18 **MR. HALLENBECK:** YOUR HONOR --

19 **THE COURT:** -- ALL OF THEM EARLY.

20 **MR. HOLLENBECK:** THIS IS PRENTISS HALLENBECK FOR TEVA
21 PHARMACEUTICALS U.S.A.

22 THE REASON FOR THAT EARLY -- AT THE CONFERENCE IN AUGUST
23 2012 THAT YOU HAD ALLOWED AN EARLY SHORT DISPOSITIVE MOTION ON
24 THE BEHALF OF TEVA AND PAR AT THE TIME, WHICH IS NOW OUT OF
25 THE CASE, IS BECAUSE THE ARGUMENT FOR TEVA IS IN LINE WITH THE

1 ARGUMENT FOR GSK. AND TEVA WAS NOT ALLOWED TO FILE A -- ITS
2 SUMMARY JUDGMENT MOTION UNTIL DISCOVERY AGAINST IT HAD BEEN
3 COMPLETED PURSUANT TO THE COURT'S GUIDANCE.

4 AND BY THE TIME THAT DISCOVERY WAS COMPLETED, PLAINTIFFS
5 HAD FILED A MOTION FOR RECONSIDERATION OF THE GSK SUMMARY
6 JUDGMENT MOTION. AND THE COURT HAD EXPRESSED A -- A DESIRE
7 NOT TO HAVE CONFLICTING DETERMINATIONS ON THE SAME TOPIC OR
8 ISSUE.

9 AND THEREFORE, TEVA HAS NOT FILED ANYTHING WAITING FOR THE
10 COURT'S DETERMINATION AS TO GSK SO THAT THERE WOULD NOT BE TWO
11 FILINGS THAT ACTUALLY HAD THE SAME ISSUE BEING DISCUSSED
12 AND -- AND BRIEFED.

13 **MR. HAVERTY:** AND, YOUR HONOR, THIS IS KEVIN HAVERTY,
14 THAT RAISES A SIGNIFICANT POINT THAT BEARS ON THE -- THE
15 MOTION FOR RECONSIDERATION AS TO JSK (PHONETIC), AND I
16 UNDERSTAND THAT THE COURT HAS INDICATED ITS INCLINATION TO
17 DENY THAT MOTION. BUT THAT WAS THE PURPOSE FOR ME FILING
18 THAT -- THIS MOST RECENT MOTION TO SUPPLEMENT THAT WITH THE
19 REPORT OF MY REGULATORY EXPERT, WHO BASICALLY SAYS THAT THE
20 SIGNAL THAT -- THE REASON THAT GSK GOT OUT OF THE CASE WAS
21 BECAUSE THEY SAID THERE WAS NO WAY THAT THEY COULD HAVE KNOWN
22 ABOUT THE SAFETY SIGNAL RELATED TO HFCCL (PHONETIC) BEFORE
23 THEY TRANSFERRED THE NDA TO TEVA.

24 AND MY -- MY REGULATORY EXPERT BASICALLY LAYS -- PUTS THE
25 LIE TO THAT AND SAYS THAT THE SAFETY SIGNAL COULD HAVE BEEN

1 DETECTED IN 2002 AND CERTAINLY IN EARLY 2003 BEFORE GSK
2 TRANSFERRED THE -- THE -- THE PRODUCT OVER TO TEVA.

3 AND MORE IMPORTANTLY THAN THAT IS A SIGNIFICANT ISSUE OF
4 THE FACT THAT WHEN TEVA TOOK THE NDA OVER FROM GSK, THERE WAS
5 NO MIGRATION OF GSK'S SAFETY PROFILE FOR THE DRUG OVER TO
6 TEVA. THEY STARTED -- THEY STARTED WITH A CLEAN SLATE ON --
7 ON SAFETY ISSUES. SO WHATEVER POSSIBLE SIGNAL COULD HAVE BEEN
8 DETECTED BY GSK WAS THEN LOST TO THE TEVA --

9 SO THEY'RE STILL -- THEY'RE STILL INTIMATELY TIED
10 TOGETHER. AND WHAT WE'VE DONE IS WE'VE -- MY EXPERT HAS
11 PUSHED BACK THE TIME WHEN THE SIGNAL COULD HAVE BEEN DETECTED
12 TO AS EARLY AS 2002 AND CERTAINLY EARLY 2003, A TIME WHEN GSK
13 COULD HAVE STILL -- STILL HAD THE PRODUCT. AND THAT WAS THE
14 BASIS FOR THE MOST RECENT FILING OF SUPPLEMENTAL MOTION TO
15 FILE THAT REPORT AS PART OF THE AUTHORITY FOR MOTION FOR
16 RECONSIDERATION.

17 **THE COURT:** YOU WEREN'T THE ORIGINAL ATTORNEY --

18 **MR. HALLENBECK:** AND, YOUR HONOR --

19 **THE COURT:** EXCUSE ME. YOU WEREN'T THE ORIGINAL
20 ATTORNEY FOR THE PLAINTIFF, RIGHT?

21 **MR. HAVERTY:** THAT'S -- NO, THAT'S NOT TRUE. I'VE
22 BEEN THE ORIGINAL ATTORNEY SINCE THE BEGINNING.

23 **THE COURT:** OH. AND WHO'S YOUR LOCAL COUNSEL?

24 **MR. HAVERTY:** IT'S LIEF CABRASER. FABRICE VINCENT.

25 **THE COURT:** I'M SORRY.

1 **MR. HAVERTY:** FABRICE VINCENT AT LIEF CABRASER IN
2 SAN FRANCISCO.

3 **THE COURT:** WELL, I GUESS WHAT I'D LIKE TO DO IS
4 TIGHTEN UP YOUR PROPOSED SCHEDULE AS MUCH AS POSSIBLE, WHICH
5 MAY SEEM ANOMALOUS SINCE I CAN'T TRY IT AS EARLY AS YOU WERE
6 THINKING PROBABLY, BUT AT LEAST IF WE COULD GET IT --
7 EVERYTHING READY FOR TRIAL, AND THEN IF WE HAVE TO HAVE A
8 DELAY, YOU KNOW, MAYBE I CAN MOVE IT UP EARLIER -- OR AT LEAST
9 YOU'LL BE DONE AND WE WON'T HAVE MORE DELAYS OR MAYBE YOU'LL
10 BE ABLE TO SETTLE IT ONCE YOU'VE GOT EVERYTHING DONE OR
11 WHATEVER.

12 SO LET'S LOOK AGAIN AT YOUR SCHEDULE AND TRY TO TIGHTEN IT
13 UP. WE'VE GOT PLAINTIFFS' DISCLOSURES ALREADY ON AUGUST 20TH;
14 DEFENDANTS' ARE DUE ON SEPTEMBER 19TH. I GUESS THAT'S PRETTY
15 SOON.

16 SO MAYBE WE'LL STICK WITH THAT DATE AND YOU CAN JUST MAKE
17 SURE YOU MEET THAT, OR EVEN BETTER, IF YOU HAVE SOME OF THEM
18 READY EARLIER, YOU COULD DISCLOSE SOME EARLIER OR AT LEAST YOU
19 COULD DISCLOSE THEIR IDENTITY SO THAT WE COULD START
20 SCHEDULING THEIR DEPO DATES AND MAKE SURE WE DON'T GET A BIG
21 DELAY MOUNTING UP LIKE YOU DID WITH OUR FACT DEPOS, 'CAUSE
22 YOU'VE GOT -- YOU'VE GIVEN YOURSELF ALMOST TWO MONTHS FOR
23 EXPERT DISCOVERY. MAYBE WE COULD SHORTEN THAT UP A LITTLE
24 BIT, TRY AND GET IT DONE BEFORE THANKSGIVING, 'CAUSE YOU'RE
25 GOING TO HAVE A PRETTY HARD TIME GETTING IT DONE AFTER

1 THANKSGIVING ANYWAY.

2 **MS. CHILDERS:** YOU KNOW, WE HAVE REACHED OUT TO
3 PLAINTIFFS' COUNSEL TO REQUEST DATES FOR THEIR EXPERTS, AND --

4 **MR. HAVERTY:** AND I'M -- AND I'M WORKING ON THAT,
5 YOUR HONOR.

6 **MS. CHILDERS:** AND IT -- FROM THE PRELIMINARY
7 INFORMATION THAT WE HAVE FROM THE PLAINTIFFS' COUNSEL, IT
8 WOULD BE DIFFICULT FOR US TO AGREE ON A SCHEDULE IF WE WERE TO
9 TIGHTEN THE EXPERT DISCOVERY -- THE -- THE COMPLETION OF
10 EXPERT DISCOVERY IS DECEMBER 10, 2013, AND IT DOES SEEM THAT
11 WE WOULD NEED THAT TIME -- IT SEEMS THAT IT WOULD BE ABOUT 13
12 INDIVIDUALS AND TRAVEL TO GET TO THESE DEPOSITIONS.

13 AND IT SEEMS LIKE THE EXPERTS ARE HAVING, YOU KNOW, SOME
14 PARTICULAR -- OR ACTUALLY, I BELIEVE IT WAS KEVIN HAVERTY,
15 PLAINTIFFS' COUNSEL, HAS SOME PARTICULAR CONFLICTS EARLY ON.

16 IT LOOKS LIKE HE HAS A FOUR-WEEK-LONG TRIAL STARTING ON
17 OCTOBER 7TH.

18 **MR. HAVERTY:** AND, YOUR HONOR, I JUST FOUND OUT TODAY
19 THAT'S -- THAT'S A RE (PHONETIC) HOLD, AND IT'S PROBABLY NOT
20 GOING TO GO, SO WE CAN PROBABLY LOOK TO SCHEDULE THESE
21 DEPOSITIONS IN EARLY OCTOBER.

22 **THE COURT:** GOOD. LET'S --

23 **MR. HAVERTY:** I ONLY HAVE THREE EXPERTS.

24 **THE COURT:** ALL RIGHT. LET'S TRY FOR EXPERT
25 DISCOVERY CUTOFF ON NOVEMBER 27TH, THE DAY BEFORE

1 THANKSGIVING.

2 AND I WANT -- I'D LIKE FOR YOU TO -- FOR THE PLAINTIFF TO
3 GIVE DATES FOR YOUR EXPERTS ASAP, LIKE AS SOON AS THE
4 DEFENDANTS WANT THEM TILL --

5 **MR. HAVERTY:** I'LL TRY TO GET THAT TO THEM NEXT WEEK.

6 **THE COURT:** AND GIVE THEM AS MANY POSSIBLE DATES AS
7 YOU CAN. ANY DATE THAT YOU'RE NOT GIVING THEM, SAY WHY THAT
8 IS: DOCTOR IN SURGERY, PLAINTIFF'S ATTORNEY IN LONG-STANDING
9 DEPOSITION THAT CAN'T BE CHANGED.

10 AND THEN I'D LIKE THE DEFENDANTS -- SURELY YOU AT LEAST
11 KNOW WHO THESE PEOPLE ARE AND IT'S NOT GOING TO GIVE A HUGE
12 ADVANTAGE IF YOU AT LEAST DISCLOSE IDENTITIES, SO WHY DON'T
13 YOU, EVEN BEFORE THE 19TH WHEN YOU'RE DISCLOSING THEIR
14 REPORTS, MAYBE IN THE NEXT COUPLE DAYS, DISCLOSE THEIR
15 IDENTITIES AND THEIR SCHEDULES SO THAT YOU CAN START
16 SCHEDULING THE DEFENDANTS' PEOPLE AS WELL AS THE PLAINTIFFS'
17 PEOPLE AND GET THEM ALL ON LINE.

18 **MS. SHAFROTH:** YOUR HONOR, IF I MAY, WE COULD GIVE
19 TENTATIVE DATES WITH -- WITHOUT DISCLOSING THE IDENTITIES
20 PERHAPS SINCE WE'RE STILL WORKING ON THE REPORTS -- GIVE
21 TENTATIVE DATES WITH WHAT TOPIC THE EXPERT WILL BE COVERING,
22 IF THAT WOULD WORK.

23 **THE COURT:** OKAY.

24 **MS. CHILDERS:** AND THAT WOULD ALLOW THE DEFENDANTS TO
25 CONFER FURTHER ON EXPERTS AND DO THEIR BEST TO COMBINE IF THEY

1 CAN POSSIBLY --

2 **THE COURT:** OKAY. ALL RIGHT. WELL, DO THAT AGAIN.

3 AND, AGAIN, YOU'VE GOT TO BE FLEXIBLE ON THE THESE DATES.
4 THIS IS AN OLD CASE. IT'S GOT TO TAKE SOME PRIORITY, SO IF
5 YOUR EXPERT'S BUSY GOING TO HIS CABIN, MAYBE HE DOESN'T GET TO
6 GO TO HIS CABIN. IF YOU'RE BUSY -- IF YOU WANT TO DO I DON'T
7 KNOW WHAT, MAYBE YOU'LL HAVE TO RESCHEDULE --

8 **MS. CHILDERS:** YES, YOUR HONOR.

9 **THE COURT:** -- AND PRIORITIZE GETTING THIS THING
10 DONE.

11 SO IF WE FINISH EXPERT DISCOVERY ON NOVEMBER 27TH, WHO'S
12 GOING TO FILE A CASE DISPOSITIVE MOTION? ONLY DEFENDANTS? OR
13 IS PLAINTIFF FILING ONE?

14 **MS. CHILDERS:** THE DEFENDANTS WILL, YOUR HONOR.

15 **MR. HAVERTY:** I --

16 **THE COURT:** PLAINTIFF ISN'T PLANNING ON FILING CASE
17 DISPOSITIVE MOTION, I TAKE IT?

18 **MR. HAVERTY:** I -- I CAN'T SEE, YOU KNOW, HOW --
19 WELL, I HADN'T SEEN THEIR EXPERT REPORTS YET, BUT I WOULD
20 ANTICIPATE, NO, NOT FILING ANY SUMMARY JUDGMENT.

21 **THE COURT:** NO.

22 (SIMULTANEOUS COLLOQUY.)

23 **THE COURT:** WHEN WHAT YOU THOUGHT YOU WERE GOING TO
24 HAVE YOUR MOTION HEARD ON FEBRUARY 13TH, WHEN WERE YOU -- WHAT
25 KIND OF BRIEFING SCHEDULE WERE YOU THINKING OF? WHEN WERE YOU

1 THINKING OF FILING IT. OH, I SEE. YOU SAY -- OH, YOU WERE
2 GOING TO HAVE PLAINTIFF FILE THEIR MOTION SIX WEEKS BEFORE.

3 WILL YOU -- WILL THE PLAINTIFF HAVE DAUBERT MOTIONS?

4 **MR. HAVERTY:** I -- IN ALL CANDOR, YOUR HONOR, I'VE
5 NEVER FILED A DAUBERT MOTION AS A PLAINTIFF, BUT I CAN'T
6 COMMENT ON THAT UNTIL I'VE SEEN THEIR EXPERT REPORTS AND TAKEN
7 THEIR DEPOSITIONS. I DON'T ANTICIPATE IT. THAT'S WHAT I
8 WOULD SAY, YOUR HONOR.

9 **THE COURT:** WELL, WHY DON'T WE --

10 **MS. CHILDERS:** AND, YOUR HONOR, FROM THE DEFENDANTS'
11 PERSPECTIVE, THE FOLKS AT OUR -- IN OUR SIDE THAT -- THAT WILL
12 BE WORKING ON THESE MOTIONS FELT LIKE THIS SCHEDULE WAS PRETTY
13 AGGRESSIVE AT THE TIME, AND IF WE COULD KEEP THE -- THE
14 SCHEDULE -- THIS PART OF THE SCHEDULE IN PLACE, I THINK IT
15 WOULD BE VERY HELPFUL TO PROVIDING MEANINGFUL INFORMATION TO
16 THE COURT.

17 **MS. SHAFROTH:** AND THIS SCHEDULE IS TRACKING FROM THE
18 ORIGINAL CASE MANAGEMENT ORDER, THE TIME FRAMES.

19 **THE COURT:** WELL, WHY DON'T WE HAVE THE PLAINTIFF
20 FILE ANY SUMMARY JUDGMENT OR DAUBERT --

21 SO YOU WERE -- WHEN WERE THE DEFENDANTS GOING TO FILE?

22 **MS. CHILDERS:** WE WOULD BE FILING -- WOULD IT BE --

23 **MS. SHAFROTH:** THREE WEEKS.

24 **MS. CHILDERS:** THREE WEEKS BEFORE FEBRUARY 13TH, SO
25 ON A CALENDAR WHICH WE HAVE HERE --

1 **THE COURT:** WELL, YOU WOULD FILE FIVE WEEKS BEFORE
2 THE 13TH BECAUSE YOU'D BE FILING A MOTION THAT YOU'D HAVE TO
3 NOTICE FOR FIVE WEEKS -- ONE, TWO, THREE, FOUR, FIVE -- SO
4 YOU'D HAVE TO FILE ON THE 9TH.

5 **MS. SHAFROTH:** I THINK THE ISSUE, YOUR HONOR, WAS
6 THAT IT WAS SUPPOSED TO BE COMBINED WITH OUR OPPOSITION TO
7 PLAINTIFFS' SUMMARY JUDGMENT AND DAUBERT MOTIONS. AT THE TIME
8 THEY HAD NOTED THAT THEY MIGHT FILE THOSE, AND SO WE NEEDED
9 MORE THAN A WEEK IN ORDER TO FILE OPPOSITIONS.

10 **THE COURT:** OKAY. WELL, LET'S HAVE THE PLAINTIFF
11 FILE ON DECEMBER 19TH ANY SUMMARY JUDGMENT OR DAUBERT MOTION
12 THAT YOU MIGHT WANT TO FILE. AND THEN LET'S HAVE THE
13 DEFENDANT FILE ITS OPPOSITION AND ITS MOTION FOR SUMMARY
14 JUDGMENT ON THE 9TH OF JANUARY. AND THE -- THE IDEAL BRIEF
15 WOULD BE COMBINED, ALL OF YOU, DAUBERT AND SUMMARY JUDGMENT.

16 IF YOU CAN'T DO THAT, THEN DO IT ANYWAY, BUT YOU COULD
17 HAVE SEPARATE SECTIONS OF IT. BUT I DON'T WANT TO READ, LIKE,
18 THREE DIFFERENT FACT STATEMENTS AND THREE DIFFERENT STATEMENTS
19 OF WHAT IS THE STANDARD FOR SUMMARY JUDGMENT AND ALL OF THAT.
20 SO WORK TOGETHER ON IT, AND IF YOU NEED A SEPARATE SECTION ON
21 A GIVEN DEFENDANT, THEN HAVE A SEPARATE SECTION AND MOVE FOR
22 AN OVERLONG BRIEF.

23 **MR. HAVERTY:** YOUR HONOR, WE COULD -- WE ALREADY HAVE
24 EXPERIENCE DOING THAT WITH THE ISSUE ON DISCOVERY, SO WE
25 CAN -- WE CAN WORK THAT OUT.

1 **MR. HALLENBECK:** YOUR HONOR, THIS, PRENT HALLENBECK
2 AGAIN FOR TEVA PHARMACEUTICALS U.S.A.

3 WOULD YOU LIKE TEVA TO -- THERE'S A TOTALLY SEPARATE ISSUE
4 THAT'S ONLY RELEVANT TO TEVA. AS I SAY, IT'S HAND-IN-GLOVE
5 WITH GSK'S SUMMARY JUDGMENT MOTION. WOULD YOU LIKE US TO FILE
6 THAT EVEN WITH THE MOTION FOR RECONSIDERATION PENDING?

7 **THE COURT:** NO, I'D LIKE YOU TO INCLUDE IT IN THIS
8 OMNIBUS MOTION THAT I'M TALKING ABOUT. YOU'RE ONE OF THE
9 DEFENDANTS, AND YOU'LL BE IN THIS SAME BRIEF THAT I'M TALKING
10 ABOUT.

11 **MR. HALLENBECK:** OKAY. SO THERE -- THE -- TEVA CAN'T
12 FILE A SEPARATE MOTION EARLY.

13 **THE COURT:** CORRECT.

14 **MR. HALLENBECK:** OKAY.

15 **THE COURT:** SO THEN WE'LL HAVE THE PLAINTIFF FILE ITS
16 OPPOSITION TO THE MOTION TO THE SUMMARY JUDGMENT MOTION AND
17 ITS OPPOSITION ON DEFENDANTS' DAUBERT MOTIONS AND ITS REPLY ON
18 ANY DAUBERT MOTIONS IT MIGHT HAVE FILED OR HE MIGHT HAVE FILED
19 ON THE 23RD.

20 WE'LL HAVE THE FINAL REPLY FROM THE DEFENDANTS ON THE
21 SUMMARY JUDGMENT MOTION ON THE 30TH, AND WE'LL HEAR IT ON THE
22 13TH AT 2 O'CLOCK.

23 WE'LL HAVE A FURTHER CASE MANAGEMENT CONFERENCE ON THE
24 13TH AT 2 O'CLOCK.

25 WHY DON'T YOU GO AHEAD AND SET UP A MEDIATION, LET'S SAY,

1 IN APRIL. YOU CAN EITHER GO BACK TO JUDGE WESTERFIELD, OR YOU
2 CAN PICK A DIFFERENT PRIVATE MEDIATOR IF YOU THINK SOME NEW
3 BLOOD WOULD BE BETTER.

4 IF YOU CAN'T AGREE ON PRIVATE MEDIATION, THEN I'LL SEND
5 YOU TO A MAGISTRATE JUDGE, SO LET ME KNOW THAT, LET'S SAY,
6 WITHIN A WEEK IF YOU'RE NOT GOING TO WANT TO GO BACK TO A
7 PRIVATE MEDIATOR.

8 **THE CLERK:** I'M SORRY. WITHIN A WEEK FROM TODAY?

9 **THE COURT:** YEAH.

10 **THE CLERK:** OKAY.

11 **MS. CHILDERS:** THANK YOU, YOUR HONOR.

12 **THE COURT:** AND IN TERMS OF A DATE --

13 **MR. HAVERTY:** THANK YOU, YOUR HONOR.

14 **THE COURT:** -- THREE WEEKS IN A ROW, I CAN GIVE YOU I
15 GUESS SEPTEMBER 2ND, AND THAT WILL BE A PRETRIAL CONFERENCE --
16 WELL, LET'S HAVE THE PRETRIAL CONFERENCE IN JUNE. LET'S SAY
17 JUNE 4TH AT 2 O'CLOCK FOR A PRETRIAL CONFERENCE. AND WE'LL
18 HAVE A -- LET'S CALL IT A -- AT MOST, A 14-DAY TRIAL SINCE
19 THAT'S LABOR DAY WEEK THAT YOU'LL START. THAT'S A SHORT WEEK,
20 SO TRY TO GET IT SHORTER THAN 14 DAYS, BUT 14 AT THE MOST
21 STARTING SEPTEMBER 2ND.

22 NOW, YOU'RE TRAILING. YOU'RE TRAILING AN '05 CASE, BUT
23 YOU'LL GO IF THEY DON'T, WHICH YOU NEVER KNOW. AND IF THEY DO
24 GO, THEN YOU'LL HAVE -- YOU'LL START SOMETIME IN SEPTEMBER AS
25 SOON AS THEY'RE FINISHED.

1 **MS. CHILDERS:** THANK YOU, YOUR HONOR.

2 **MR. HAVERTY:** NICE TIME OF YEAR TO BE IN NORTHERN
3 CALIFORNIA.

4 **THE COURT:** IT IS ACTUALLY, BUT YOU WON'T BE OUT
5 MUCH.

6 (LAUGHTER.)

7 **MR. HAVERTY:** JUST CROSSING THE STREET FROM THE HOTEL
8 HERE.

9 **THE COURT:** RIGHT. THAT WILL BE IT.

10 **MS. CHILDERS:** THANK YOU.

11 **THE COURT:** OKAY. ANYTHING ELSE?

12 **MS. CHILDERS:** NO, THAT'S ALL.

13 **MR. HAVERTY:** THANK YOU.

14 **MR. HALLENBECK:** THANKS VERY MUCH, YOUR HONOR.

15 **THE COURT:** AND DON'T BE ASKING FOR ANY CONTINUANCES.
16 HE PROBABLY DIDN'T HEAR THAT. TELL HIM I SAID SO.

17 **MS. CHILDERS:** WE WILL.

18 **THE COURT:** WE'RE GOING TO STICK TO THIS.

19 **MS. CHILDERS:** THANK YOU, YOUR HONOR. OUR APOLOGIES.

20 (PROCEEDINGS WERE CONCLUDED AT 2:41 P.M.)

21 --000--

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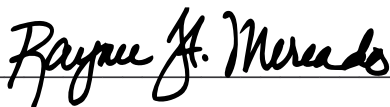
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CERTIFICATE OF REPORTER

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO,
NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS
HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR
OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

SUNDAY, SEPTEMBER 15, 2013